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IN THE
COURT OF APPEALS OF INDIANA

PATRINA HALL and BRIAN K. HALL,	)	
	)	
Appellants-Defendants,	)	
	)	
vs.	)	No. 75A04-0608-CR-447
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE STARKE CIRCUIT COURT
The Honorable Don E. Harner, Senior Judge
Cause No. 75C01-0411-FD-185

May 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Patrina Hall and Brian Hall appeal their convictions for neglect of a dependent as class D felonies.[1] Patrina and Brian raise one issue, which we revise and restate as whether the evidence is sufficient to sustain their convictions. We affirm.

The facts most favorable to the convictions follow. Brian and Patrina are the parents of E.H., born on February 22, 2002, and B.H., born on February 8, 2003.[2] The Halls lived in a two story residence. E.H. and B.H. (the "Children") slept in a bedroom upstairs. Brian and Patrina slept in a bedroom on the first floor.

On the morning of November 1, 2004, it was raining, "sleet[ing]," and "very cold." Transcript at 187, 241. At approximately seven a.m. on the morning of November 1, 2004, Gladys Centers, one of the Halls's next door neighbors, heard crying outside. Joyce Centers, who lived with Gladys, was awakened by the crying. Joyce heard the crying for thirty to forty-five minutes before getting up to see what was making the noise. Joyce saw a child in a diaper standing by the backdoor of the Halls's residence.

Gladys called Dawn Centers, her daughter-in-law, who lived across the street "catty-corner" from her. Id. at 184. Within minutes, Dawn went outside and heard a child crying loudly from across the street. Dawn went across the street to Gladys's home so that she could get a better idea of where the cries were coming from. Dawn realized that the cries were coming from the Halls's house, and she looked in the backyard. Dawn

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[1] Ind. Code § 35-46-1-4 (Supp. 2004) (subsequently amended by Pub. L. No. 26-2006, § 2 (eff. July 1, 2006)).

saw a wet child wearing only a diaper and no socks or shoes crying in the backyard. The child was cold and trying to get into the house by hitting the backdoor.

Dawn pounded on the front door of the Halls's house so hard that the windows were "rattling." Id. at 190. When there was no response, Dawn tried to go into the backyard. Dawn realized that there was a second child wearing "thick underwear, t-shirt maybe," and no socks or shoes. Id. The child had blood running down his hand. Dawn attempted to get through a fence but it was wired with a coat hanger, and Dawn could not jump over the fence. Dawn returned to the front door of the house and pounded on the door again, but there was no response. The Children continued to cry during the entire time.

Dawn returned to Gladys's home and could hear the Children from inside the home. Dawn called the police. At this time, twenty minutes had passed since Dawn first saw the Children. Knox City Police Officer Vicky Powers received the call at 8:40 a.m. Dawn went back outside, and Brian was letting the Children into the house through the backdoor.

Dawn knocked again at the front door to see if they needed any assistance. Brian came to the door as Officer Vicky Powers arrived at the scene. Brian told Dawn "you can get off my property any time. You don't need to be here," and Dawn left. Id. at 195. Patrina's demeanor was hostile towards Officer Powers, and Patrina blocked Officer

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[2] Patrina also has another child, T.M., who was not at home at the time of this incident.

Powers's view of the inside of the residence with her body. Officer Powers explained why she was there and asked to come inside, and Patrina told her she was not allowed inside. Patrina was going to shut the door when Officer Powers asked to speak with Brian. One of the Children came up to Patrina, and Patrina picked up the child. The child had a cut on his finger and blood on his leg. Officer Powers touched the child's foot, and the child was "cold to the touch," and the child's cheeks and nose were rosy. Id. at 244. Officer Powers also saw the second child who looked cold and had rosy cheeks. Brian came to the door, and his demeanor was very hostile. Brian and Patrina told Officer Powers that they were sleeping and that the Children were able to get out of the residence. Officer Powers called Child Protective Services. Officer Powers went to Gladys's residence and printed out the weather condition for the day, which indicated forty-eight degrees and drizzling.

Gary Ekart, an investigator for the Indiana Department of Child Services, responded. Ekart noticed that the Children looked "like they had been in the wind or cool temperatures." Id. at 257. Ekart also noticed that E.H. had a cut on his finger. Brian and Patrina were unable to determine how long the Children had been outside. Ekart investigated how the Children left the house and noticed that the backdoor did not have childproof locks on it.

The State charged Patrina and Brian each with two counts of neglect of a dependent as class D felonies. Specifically, the State charged that Patrina and Brian,[3] "having the care, custody, and control" of B.H. and E.H., "a dependent, whether assumed voluntarily or because of a legal obligation, did knowingly place" B.H. and E.H. "in a situation endangering" B.H. and E.H.'s "health, to wit: failed to prevent" B.H. and E.H. "from remaining in cold weather for over one hour, dressed only in a diaper and t-shirt, unsupervised." Brian's Appendix at 8; Patrina's Appendix at 10.

At trial, Patrina testified that she was awakened by the knocking at the front door and then heard E.H. and B.H. crying. Patrina testified that while she and Brian were sleeping E.H. and B.H. went through a plastic gate at the top of the stairs, one unlocked door downstairs, and two locked doors downstairs in order to get outside. Patrina also testified that she was not hostile with Officer Powers and that Officer Powers was hostile towards her and Brian. At the close of the State's evidence, Patrina and Brian each moved for a directed verdict. Patrina and Brian argued that there had been no knowing conduct. The trial court denied the motions for directed verdict. At the close of the defense's evidence, Brian moved for a directed verdict and argued that there was no evidence that he placed E.H. and B.H. in a situation that endangered their health and that he did not knowingly place the Children in such a situation. Patrina also renewed her

[3] The State charged Patrina and Brian each with one count of neglect of a dependent pertaining to B.H. and one count pertaining to E.H. The counts are identical except for the names and the ages of B.H. and E.H.

motion for a directed verdict. The trial court again denied both motions. The jury found Patrina and Brian guilty as charged. The trial court sentenced Patrina to serve eighteen months in the Indiana Department of Correction with fourteen months suspended. The trial court sentenced Brian to serve eighteen months in the Indiana Department of Correction with six months suspended.

The sole issue is whether the evidence is sufficient to sustain Patrina and Brian's convictions for neglect of a dependent as class D felonies. When reviewing claims of insufficiency of evidence, we do not reweigh the evidence or judge the credibility of witnesses. Stewart v. State, 768 N.E.2d 433, 435 (Ind. 2002), cert. denied, 537 U.S. 1004, 123 S. Ct. 493 (2002). Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable factfinder could find the defendant guilty beyond a reasonable doubt. Id. It is well established that "circumstantial evidence will be deemed sufficient if inferences may reasonably be drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt." Pratt v. State, 744 N.E.2d 434, 437 (Ind. 2001).

The offense of neglect of a dependent is governed by Ind. Code § 35-46-1-4, which provides, in pertinent part, that "[a] person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally . . .

places the dependent in a situation that endangers the dependent's life or health . . . commits neglect of a dependent, a Class D felony." Thus, to convict Patrina and Brian of neglect of a dependent as a class D felony, the State needed to prove that Patrina and Brian: (1) knowingly or intentionally; (2) placed B.H. and E.H. in a situation that endangered E.H. and B.H.'s health.

"[T]he level of culpability required when a child neglect statute requires knowing behavior is that level where the accused must have been subjectively aware of a high probability that he placed the dependent in a dangerous situation." Armour v. State, 479 N.E.2d 1294, 1297 (Ind. 1985). "Because such a finding requires one to resort to inferential reasoning to ascertain the defendant's mental state, the appellate courts must look to all the surrounding circumstances of a case to determine if a guilty verdict is proper." McMichael v. State, 471 N.E.2d 726, 731 (Ind. Ct. App. 1984), reh'g denied, trans. denied.

A. Patrina's Arguments

Patrina argues that "[t]he evidence of [her] subjective awareness is that she had placed her children in their bed upstairs, asleep, with a plastic gate at the top of the stairs, with three (3) closed doors (two of them locked), between her children and the fenced-in backyard" and that "no reasonable jury could find her guilty of knowingly placing her children in actual and appreciable danger for their life or health." Patrina's Brief at 5.

In support of her argument, Patrina notes the trial court's response to her motion for judgment on the evidence after the defense rested. Specifically, Patrina cites that the

trial court stated, "All right. Look, if this would have been a bench trial, I would have stopped it yesterday after the State's case ended. Okay." Transcript at 324. However, the trial court went on to state:

> There was a jury demand. The Jury was sworn - - selected and sworn. The Jury sat through exactly the same evidence I did. For me - - now we've got a different ball game. For me to take it away from the Jury, I basically have to determine that there's no reasonable Juror anywhere in the world that could convict these two (2) on the evidence that is submitted in this court. Okay.
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> What you guys are doing, you're arguing to me as if I was the fact finder in this case, and I'm not. I foresee - - I mean, you don't have to have direct evidence on everything. It can be circumstantial. I - - what I see is a possibility that a Juror could determine from the first witness' testimony yesterday that they had to have known of the situation.
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> Now we're talking about who - - what witnesses do you believe, how much of what witness - - these are all Jury questions. It's not something I can take away from them. Okay.
>
> So I'm - - and I'm not going to take them away from them as long as there is any implied possibility of determining each of those elements have been - - that has evidence on them. Okay.
>
> Just comes down now to the fact that whether or not they're convinced beyond a reasonable doubt. I know I - - I wasn't yesterday, but that's me, and I will be substituting my view of the evidence for the people that are supposed to be making this decision. Not me. Okay.

Id. at 324-325.

The facts most favorable to the conviction reveal that E.H. and B.H. were locked outside for more than an hour and a half when it was sleeting and "very cold." Id. at 187, 241. The Children only had on diapers and no socks or shoes. One of the Children was trying to get back into the house by hitting the backdoor. One of the Children had blood

running down his hand from a cut and blood on his leg. Joyce Centers, who lived next door to the Halls, was awakened by the cries of E.H. and B.H. Gladys Centers also heard the cries from inside the house next door. Dawn Centers was able to hear a child crying loudly from across the street.

Dawn pounded on the front door of the Halls's house so hard that the windows were "rattling," but there was no response. Id. at 190. Dawn went to the backyard and then returned to the front door of the house and pounded on the door but there was no response. The Children continued to cry during the entire time. Dawn could also hear the Children from inside Gladys's home. When Officer Powers arrived, one of the Children's feet was "cold to the touch," and the child's cheeks and nose were rosy. Id. at 244. Officer Powers also saw the second child who looked cold and had rosy cheeks. Patrina's argument is merely a request that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Stewart, 768 N.E.2d at 435. We conclude that evidence of probative value exists from which the jury could have found Patrina guilty of two counts of neglect of a dependent as class D felonies. See, e.g., Thames v. State, 653 N.E.2d 517, 517 (Ind. Ct. App. 1995) (holding that the evidence was sufficient to support a conviction of neglect of a dependent).

B. Brian's Arguments

Brian argues that "[t]he evidence in this case tends to show only that Brian Hall's children were asleep in their beds when he came home from work in the early morning hours, and that Brian Hall was asleep in his own bed when his sons got out of the house

and into the backyard." Brian's Brief at 10. Brian also argues that "[a]n accused can not be subjectively aware of a dangerous situation that arose while he slept." Id. Brian relies on Moore v. State, 845 N.E.2d 225 (Ind. Ct. App. 2006), trans. denied, to argue that "it is not enough that the evidence shows that the boys' crying *could have* awakened him, but that it was so loud that it could not have failed to awaken him." Id. In Moore, Denise Moore was an employee of the Indiana Family and Social Services Administration. Moore, 845 N.E.2d at 226. Moore was a case manager for twins that had tested positive for cocaine at birth. Id. Latricia Bars contacted Moore and claimed to be a relative of the twins. Id. at 226-227. Moore prepared an adoptive home study for the Bars family. Id. at 227. The home study document stated that Latricia Bars had had no previous contact with the Marion County Office of Family and Children ("MCOFC"). Id. The statement later proved to be incorrect as the Bars had previously had contact with the MCOFC, which substantiated abuse in the household. Id. The Bars adopted the twins and were later convicted of child neglect. Id.

The State charged Moore with two counts of neglect of a dependent as class B felonies and obstruction of justice as a class D felony. Id. The jury acquitted Moore of the charges of neglect of a dependent but found her guilty of obstruction of justice. Id. On appeal, we held that "[i]n order to convict Moore of obstruction of justice, the State was required to prove that Moore made, presented, or used a false record, document, or thing with intent that the record, document, or thing, material to the point in question, appear in evidence in an official proceeding or investigation to mislead a public servant."

Id. at 228 (citing Ind. Code § 35-44-3-4). We held that the State introduced no evidence that Moore knew of the Bars's previous contact with the MCOFC. Id. We held that the ease with which Moore could have obtained the information that the Bars had previous contact with the MCOFC was "not enough to prove that she knew of the contact yet falsely reported that there was none." Id.

Brian appears to argue that the evidence is subject to conflicting inferences. "The question, however, is whether the inferences supporting the judgment were reasonable, not whether there were other 'more reasonable' inferences that could have been made." Thompson v. State, 804 N.E.2d 1146, 1150 (Ind. 2004). "Reaching alternative inferences such as this is a function of the trier of fact, not this Court. We cannot reverse the conviction merely because this inference is a plausible one that might have been drawn from the evidence." Id. (quoting Askew v. State, 439 N.E.2d 1350, 1352 (Ind. 1982), reh'g denied).

> Triers of fact determine not only the facts presented to them and their credibility, but any reasonable inferences from facts established either by direct or circumstantial evidence. It is not necessary that the court find the circumstantial evidence excludes every reasonable hypothesis of innocence. It need only be demonstrated that inferences may reasonably be drawn which support the finding of guilt.
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> Id. (quoting Metzler v. State, 540 N.E.2d 606, 610 (Ind. 1989)).

Here, the record reveals that two neighbors in the house next door heard the cries of the Children. A neighbor that lived across the street could also hear the cries. Further, the cries went on for an hour and a half and one of the neighbors pounded on the door

twice with no response. The State presented evidence of probative value from which the jury could have found Brian guilty of two counts of neglect of a dependent as class D felonies. Brian essentially requests that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Stewart, 768 N.E.2d at 435.

For the foregoing reasons, we affirm Patrina and Brian's convictions for neglect of a dependent as class D felonies.

Affirmed.

SULLIVAN, J. and CRONE, J. concur